

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

KATHRYN KNOWLTON,
et al,

Plaintiffs.

v.

Case No. 20 CV 01660

CITY OF WAUWATOSA,
et al.

Defendants.

PLAINTIFFS' MOTION TO SUPPLEMENT RESPONSE

Plaintiffs, by and through undersigned Counsel, provide this request to Supplement Plaintiffs' Response to Defendant's Motion to Stay the Proceedings in ECF #101 as filed on October 21, 2021. On October 29, 2021, Plaintiffs received new information via the Court filing by Defendants (ECF # 103) confirming the absence of any contracts, employee file, personnel file, or scope of duty that Attorney George Schimmel has with the City of Wauwatosa.

On January 30, 2021 Plaintiffs submitted an open records request to the City of Wauwatosa Attorney Alan Kesner requesting a copy of George Schimmel's contract with the City of Wauwatosa. (See attached Exhibit A). Counsel sent follow up emails on February 17, 2021 and March 15, 2021. Ultimately, Attorney Kesner did not provide any contract, but stated on 2/17/21 that he "recalls seeing it on paper many years ago, but not for quite a while." Attorney Kesner acknowledged that Attorney Schimmel is being paid and that he is not an employee but is an "outside contractor, outside counsel." (See Exhibit A).

Additionally, on September 16, 2021, Plaintiffs served Defendants with Request for Production discovery demands including a request to “produce the contract, terms of reference, employment personnel file and/or employment file of George Schimmel and/or Schimmel Law Offices that he or his entity has with the City of Wauwatosa during the entirety of this contractual relationship with the City of Wauwatosa.” (See ECF #103, p. 14, No.7) Defendants objected to this request on October 15, 2021, stating:

overly broad, unduly burdensome, and is not limited in scope or to any relevant period of time. Further object on the grounds that this Request seeks information not relevant to this litigation nor is it proportional to the needs of the case and is merely being used to annoy and harass the Defendants. Moreover, this Request seeks information relating to George Schimmel’s relationship (specifically the attorney client relationship) with the City of Wauwatosa, which is currently the subject of a pending request for protective order. (Dkt Nos. 79 & 80) Subject to and without waiving the objections, Defendants are not in possession of any documents responsive to this request.

Defendants did not provide any production.

After receipt of the above discovery demand, Defendants submitted on September 30, 2021, a brief and a Motion to Quash and Motion for Protective Order as it relates to Attorney George Schimmel. ECF #80. As supporting evidence, Defendants also submitted an affidavit by George Schimmel. In that affidavit, Mr. Schimmel states that “he is a contract attorney for the City of Wauwatosa.” And also that his title is “Special Assistant City Attorney and Municipal Court Prosecutor.” See ECF #82.

Defendants and Attorney Schimmel have repeatedly stated that he is a prosecutor with prosecutorial immunity and that his contract, for which he is getting paid, is with the City of Wauwatosa, and is privileged. Pursuant to Wis. Stat. 62.09(12) a city may appoint an unpaid assistant unless such payment is previously provided for by ordinance. Per the City of Wauwatosa

Attorney Kesner's email of January 30, 2021, Attorney Schimmel is being paid by the City of Wauwatosa and there are no ordinance that allow for such payment.

Attorney Schimmel's contract, the terms of his contract, his scope of authority as an attorney hired by the City of Wauwatosa is critical to understanding what exactly his role was and the extent of his role as it relates to many of the Plaintiffs' claims in this matter. It was not until October 29, 2021, nearly nine months after good faith attempts to properly confirm status of Mr. Schimmel's contract and scope of employment, that the Defendants finally admitted that there is no contract between the City of Wauwatosa and Attorney Schimmel. As such, we respectfully offer this newly discovered information as supplemental to our previously filed Response.

Executed on the 5th day of November 2021.

s/ Kimberley Cy. Motley
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